FOR MYSORE STATE

Home (1943) Department.

Hh SERIES.

G.O. NO. 3531

Dated 25.11.43

Passed
by Hh

[Despatch Abstract.]

Crl. Justice - Appeal against Acquittal - C.C. No. 401/43 / Stg. S.M., Kanakal - Annulled - Sanctioned.

Special.
Ref.C3.7522/53.
Regd. Post.

Office of the Collector of
South Kanara, Mangalore,
Dated 12th October 1953.

From

Sri A.Mahalingam Chettiar, I.A.S.,
District Magistrate of South Kanara,
Mangalore.

To 19381

The Secretary to Government,
Home Department, Fort St.George,
Madras.9.

ASSISTANT SECRETARY TO GOVERNMENT
17 OCT
HOME DEPARTMENT

Sir,

Subject: Criminal Justice - C.C.401/53 on the file of the S.S.M.Karkal - Appeal against acquittal - Proposals - submitted .

.....

The Stationary Sub Magistrate Karkal in his order in C.C.401/53 dated 24-7-1953 acquitted the accused Mahabala Hegde under section 247 Cr.P.C, who was charged by the Tahsildar Karkal Taluk under Section 26 of the Madras Forest Act with the illicit felling of trees from Government land. The acquittal was on the ground that the complainant had not made arrangements to conduct prosecution on 23-7-1953 on which date the case was posted for trial. Three prosecution witnesses summoned, were present. The Tahsildar has reported that no notice of the posting of the case to 23-7-1953 was received by him. I have consulted the Public Prosecutor South Kanara in the matter. He is of opinion that an appeal should be filed in this case. I have perused the judgment and the grounds of appeal furnished by the Public Prosecutor. I agree with the Public Prosecutor that this is a fit case to prefer an appeal against the acquittal. I therefore recommend that the Public Prosecutor Madras may be instructed to file an appeal in the High Court against the orders of the Stry. Sub Magistrate Karkal in C.C.401/53.

2. I enclose authenticated copies in duplicate of the Judgment in C.C.401/53 on the file of the S.S.M.Karkal, report No.Ref.O.R.4/53-54 dated 4-9-1953 of the Tahsildar Karkal and grounds of appeal furnished by the Public Prosecutor, South Kanara.

Yours faithfully,

13/10/53

District Magistrate.

Enclosures:

Government of Madras
Home Department.

Endorsement No. 193811 cls II/53-1 Dated 23-10-53

18321

Referred to the Public Prosecutor, Madras for early remarks

(Time limit 31st from the date of endorsement of papers in 23.10.53)

J. Subbaswamy
20 Oct 53
Deputy Secretary to Govt

of plant

To
The Public Prosecutor 20.10.53
Madras
(with copy of judgment (V)
to be returned with reply)

20/10/53

...ge of C.C.No.4/53-54 dated 1.9.53 from the Tahsildar, Talapady to the Collector of South Kanara.

CONTEMPT OF COURT NO. - C.C.401/53 on the file of the Stationary Sub Magistrate Kasaragod - filing of conviction petition - sent submitted.

*** *

One Mahabala Hegde of Hosmunde village of Perla in the month of December 1952 illicitly felled one Pongamia 4 dolchini one matti and two cartloads of firewood from Govt. ...wood in Sy.No.56 of Hosmunde village of this Taluk. The offence was detected by the Revenue Inspector, Adhikari and after due enquiry in which the accused admitted the offence before the Revenue Inspector and also expressed his willingness to compound the offence, the offence was compounded for Rs.50 with the accused. The seizures consisting of the cartloads of firewood were ordered to be released to the accused on his paying the seigniorage value of Rs.3.12.0. Inspite of the service of the C.Notice to pay up the compounding fee, the accused failed to pay the compounding fee and therefore a charge sheet was filed before the Stationary Sub Magistrate Kasaragod.

2. The Stationary Sub Magistrate took the case on file as C.C.401/53 and as would appear from the order of acquittal of the Stationary Sub Magistrate dated 24.7.53, the accused was apprehended on 13.7.53 when the latter levied the charge before the Stationary Sub Magistrate and the case was posted for enquiry to 23.7.53. On 24.7.53 the Stationary Sub Magistrate ...ame to have acquitted the accused under Sec. 47 Cr.P.C. for failure on the part of the prosecution to make arrangements to conduct prosecution. It also appears from the Stationary Sub Magistrate's order that three witnesses were present in court on 23.7.53.

3. The Stationary Sub Magistrate's order in this case is quite against law and is not sustainable. Though the Stationary Sub Magistrate has remarked in the order that notice was issued to the Govt. to make arrangements to conduct prosecution on 23.7.53, no such notice as above received in this case. The observation of the Stationary Sub Magistrate to that in fact P.W.1 (the village shanbhogue) cited in the charge sheet was summoned through the Police by the Sub Magistrate is not correct. The

notice to conduct prosecution was issued to me and ever otherwise this fact could not under any circumstances be taken as a notice of prosecution. Myself and my officers have ever been and alert in regard to forest offences because of the increasing tendency of the part of the dealers in timber to commit indiscriminately forest offences. If only the stationary Sub Magistrate had really issued a notice to me there was no reason whatsoever for the matter being overlooked.

4. The stationary Sub Magistrate who has acquitted the accused under Sec.247 Cr.P.C. has conspicuously overlooked the fact that the complainant in this case is a public servant and that therefore he should not have summarily acquitted the accused on account of the absence of the complainant or arrangements to conduct prosecution. He has not even taken care to examine himself the witnesses present in court and he has overlooked the fact that the accused, stated in the complaint itself, had made an extra judicial confession to the Revenue Inspector, which is relevant evidence in this case. Under the proviso to sec.247 Cr.P.C which is the section under which the Stly.Sub Magistrate acquitted the accused, the learned Magistrate should have proceeded with the enquiry before passing an order.

5. Another striking factor in this case is that though the case had stood posted to 23.7.53 and the accused and witnesses were present in court on that date, the Stly.Sub Magistrate simply binds over the accused for the next day i.e. 24.7.53 and acquits the accused on 24.7.53. Ideally the learned Magistrate had in mind that the accused should be acquitted for failure of the prosecution to conduct properly the case itself and ordered on 23.7.53 itself. It is not known what prevented him to order failure on 23.7.53 itself. The proper course to be adopted in such a case is either to adjourn the case for the next day for failure of the prosecution to be present on the previous day. When the learned Magistrate adjourned the case for any reason he should not have proceeded the case without giving notice of such adjournment to the prosecution also.

Judgment (V)

G R O U N D S

1. The order of acquittal passed by the learned S.S.M. in C.C.No. 401/1953 on his file is improper- arbitrary and not judicial.

2. The learned S.S.M. has wrongly acquitted the accused under Section 247 of the Criminal Procedure Code altogether ignoring the fact that there is no complainant as such in the case, the whole case resting on a charge-sheet filed by the Tahsildar of Karkal who is not even a witness in the case.

3. The learned S.S.M. should have proceeded under Section 284 (1) of the Criminal Procedure code and should have taken the evidence of the three prosecution witnesses who were admittedly present in court before passing any orders. The S.S.M. has grossly failed to observe this duty which is mandatory on him, and has wrongly acquitted the accused under Section 247 of the Criminal Procedure code forgetting that there is no complainant as such in the case on whose absence the accused could be acquitted.

4. The S.S.M. has acquitted the accused under Section 247 of the Criminal Procedure Code even without issuing summons to the Tahsildar who may be said to be representing the state either of the case being posted to 23.7.1953 or to 24.7.1953 on which day the accused was acquitted.

5. The acquittal of the accused without even examining the witnesses for the state who were present in court on summons is wholly illegal.

6. The procedure adopted by the S.S.M. is further illegal as he does not pass the order of acquittal on 23.7.1953, the date appointed for the appearance of the accused. On the other hand, the order of acquittal is passed on 24.7.1953 without making any efforts to send notice of summons to the state of the adjourned date 24.7.1953; This would clearly prove that there are no bonafides in the order and that the order is manifestly perverse and illegal.

p.r.t.

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7. The learned S.S.M. should have been more judicious and instead of posting the case to the very next day, should have adjourned it by a few days and sent notice of the day to the state before passing his judgment.

(True copy

Sd. xxx xxx
Public Prosecutor, S.K.

(True copy)

For Dt. Magistrate.

14/10

C.F. 32 (a)—. 184,468—15-11-52.

Judicial Department	Received ____ Registered ____
From (Name) Sri V.T.Rangaswami Ayyangar, B.A.B.L.,	To,
Designation Public Prosecutor,	The Secretary to Government, Home Department, Madras.
Station Madras.	

Enclosures: Opn. No. 220/53, dated 23-10-1953 195

Sir,

Sub: Appeal against acquittal - C.C.401/53,S.S.M. Kovil - Forwarding opinion.

With reference to Endorsement No.193811 Cts.II/53-1, Home, dated 23-10-53, I have the honour to give below my opinion in the above matter.

2. The papers received for reference are returned herewith.

193583 Judgment Majat (V) Opinion.

6.

The acquittal of the accused by the l

notwithstanding the fact that the compla

was by a public servant and when the witnesses were present and when it cannot be stated that the presence of the complainant. a public servant, was necessary is not justifiable and the learned Magistrate ought to have proceeded with the examination of the witnesses independent of the fact as to whether the Tahsildar was present or not and under those circumstances an appeal against acquittal could be filed.

V. T. Rangaswamy

Public Prosecutor.

23/X

(cno(P) 93811 ds II/53)

HOME DEPARTMENT.

G.O.Ms.No. 3531

Dated: 25.11.53.

CRIMINAL JUSTICE - Appeal against acquittal — C.C. No. 401/53 on the file of the Stationary Sub-Magistrate, Karkal — Application - Sanctioned.

Read:- (1) From the D.M., South Kanara. Ref. C. 3.7522/53 dated 12.10.53.

(2) From the P.P., Madras, Opn. No. 220/53 dated 23.10.53.

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O R D E R:

Under Section 417 of the Code of Criminal Procedure, 1898 the Public Prosecutor, Madras is requested to present an appeal to the High Court against the acquittal by the Stationary Sub-magistrate, Karkal of the accused in C.C. No. 401/53 on his file.

To the P.P., Madras. (Intimation)

Copy to the D.M., South Kanara

NOTE:- The draft order above follows the opinion of the Public Prosecutor, Madras on pp 11-12 cf

Date of judgment is 24.7.53.
3 months time expired on 23.10.53
6 months time expires on 23.1.54.

Development may see before issue

Home 19381 ds 11/53-2

29.X.53

Home Dept. note & their draft order above may be issued. May be returned to Home through Revenue.

Dev no 129913 Dev (CT) 29.10.53

SECOND ASSISTANT SECRETARY TO GOVERNMENT
24 OCT 1953
DEVELOPMENT DEPARTMENT

1/1

193811

20/21

R.D.

Police

may be perused & returned to Home

14.11.53

16/11/53

208356
12

17-11-53

Home

ASSISTANT SECRETARY 17A 14.11.53 14/11/53 HOME DEPARTMENT

R.D.No. 90274 C/53 16-11-53

The notes of L. & C. dept & Rev. at pp 1 & 2 above may be perused. The draft order at plaint may now issue

18.11.53

The draft order sanctioning an appeal against the acquittal may be approved.

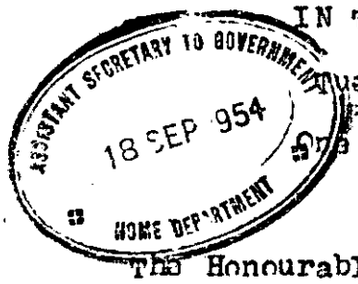
18/11/53

19/11/53

SECRETARY TO GOVERNMENT 24 NOV 1953 HOME DEPARTMENT

M (Law) K.P. Krishnan 22-11-53

GOVERNMENT OF MADRAS 24 NOV 53 HOME DEPARTMENT



IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Tuesday, the Thirtyfirst day of August,

One thousand nine hundred and fifty four.

Present:

The Honourable Mr. Justice Somasundaram.

Criminal Appeal No. 925 of 1953.

The Public Prosecutor. Appellant.

Mahabala Hegde. Respondent (Accused).

Appeal under Section 417 of the Code of Criminal Procedure, 1898, against the acquittal of the aforesaid respondent (accused) by the Stationary Sub Magistrate of Karkal in C.C.No. 401 of 1953 on his file.

123460

This appeal coming on for hearing, upon perusing the petition of appeal and the record of the evidence and proceedings before the said Lower Court and upon hearing the Public Prosecutor, the Appellant and the Respondent not appearing in person or by Advocate, the Court delivered the following:

JUDGMENT:

This is an appeal by the State against the acquittal of the respondent who was charged before the Stationary Sub Magistrate, Karkal, for breach of Rule 7 read with Rule 9 and punishable under Rule 15 of the Rules framed under Sec.26 of the Madras Forest Act.

The reason for the acquittal of the respondent is that the witnesses were present, but there was nobody to conduct the prosecution. The complaint was filed by the Tahsildar of Karkal. Under section 247 of the Code of Criminal Procedure, the Magistrate can acquit the accused in a private case if the complainant is not present. But under the proviso to that section, where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed

153160

with the case. The learned Magistrate ought to have followed the provisions of the proviso to section 247 of the Criminal Procedure Code and he should not have acquitted the accused merely on the ground of absence of the the Tahsildar or anyone to conduct the prosecution. But in view of the fact that the offence was committed in December 1952, I do not think that the ends of justice require that the accused should be put on retrial again.

With the above observations, the appeal is dismissed.

(Sd.) V.T. Kandaswami,

Deputy Registrar, App. Side.

/ True copy /

S. Jagannarayan

Sub Assistant Registrar. App. Side. 16-7-54

To

1. The Stationary Sub Magistrate, Karkal (with records).
2. -do- through the District Magistrate, South Kanara, Mangalore.
3. The Inspector General of Police, Madras.
4. The Public Prosecutor, Madras (two copies).

vsa

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Dated 31 8 1954.

C.A.925-3-53.

Public Prosecutor's Office,
Madras, dt. 17-9-54.

Forwarded to the Secretary to Government, Home Department, Madras with reference to G.O.Ms.No.3531, Home, dated 25-11-53.

V.T. Raman

Public Prosecutor.

17.9.54

To
The Secretary to Government.
Home Department,
Madras.

JUDGMENT:

Crl.App.No. 925 of 1953.

PUBLIC PROSECUTOR'S OFFICE MADRAS 17 SEP 1954

Dismissing the appeal against the order of th Acquittal in C.C.No. 401 of 1953 on the file of the S.S.M. Karkal.

C. No. 123460/54.

Home (Cts I) Dept.

Copy of the judgt. of the H. Ct., Madras, in C. A. No. 925/1953 on its file.

Ref: From the P. P., Madras, C. A. 925-3-53 dt. 17.9.54.

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p. 4 c. f.

The State filed an appeal against the acquittal of the accused by the S. S. M., Karkal, in C. C. No. 401 of 53 on his file. (Vide G. O. Ms. No. 3531, Home, dt 25.11.53) The H. Ct. in C. A. No. 925/53 on its file did not agree with the lower court in acquitting the accused on the ground that nobody was present to conduct the prosecution though the witnesses were present before the lower court on the hearing day ~~before according to the H. Ct~~ It has also pointed out that the lower court should have followed the provisions under such a circumstance of the proviso to sec. 247 Cr. P. C. However, in view of the fact that the offence was committed as far back as December, 1952, it did not consider that a retrial should be held and ∴ dismissed the appeal. The copy of its judgt. at the c. f. may be added to the G. O. at (P).

p. 13 c. f. of (P)

pp 1-3 c. f.

21.9.54.